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CASE NO: OFFICE OF THE CLERK

UNITED STATES SUPREME COURT

In re Kenneth L. Smith, Petitioner

On Petition for Writ of Mandamus or Prohibition to the United States Court of Appeals for the Tenth Circuit

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28 pp

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QUESTION PRESENTED FOR REVIEW

Does the First Amendment right to petition the government for the redress of grievances require inferior federal courts to, in unpublished opinions, follow direct precedent established in the United States Supreme Court and/or that circuit?

BASIS FOR JURISDICTION

The original judgment for which Petitioner is seeking review was entered on or about June 11, 2003. The order denying Petitioner's motion for rehearing was entered on July 3, 2003; as such, this petition is considered as timely filed when mailed on or before October 1, 2003. (This corrected copy, submitted on or before December 7, 2003, is thus considered timely filed).

Petitioner relies on this Court's general authority under 28 U.S.C. § 1651 to issue writs.

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED IN THIS CASE

This case implicates the First Amendment to the United States Constitution, which states: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

CONSIDERATIONS UNIQUE TO ISSUANCE OF AN EXTRAORDINARY WRIT

Petitioner seeks a writ of mandamus or, in the alternative, a writ of prohibition, as against the United States District Court for the District of Colorado and/or the United States Court of Appeals for the Tenth Circuit. The individual judges involved are the Hon. Edward W. Nottingham, Stephen H. Anderson, Mary Beck Briscoe, and James E. Barrett.

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STATEMENT OF THE CASE

As they pertain to this narrow issue of law, the facts of this case are simple. Petitioner Kenneth L. Smith ("Smith") is a 45-year-old law school graduate who met all objective requirements for admission to Colorado's bar. But he was not only summarily denied state bar admission, but also, a hearing he was statutorily entitled to, in which he would have an opportunity to present his case for admission.

Smith filed an action in federal district court alleging that the Colorado bar admission statute was void for vagueness, and also lacked basic procedural safeguards required by the Due Process Clause. He further alleged that the defendants violated his right to due process of law in connection with his application, under the theory of law espoused by this Court in *Carey v. Piphus, 435 U.S. 247 (1978),* and personally liable for their tortious conduct under standards established in *Forrester v. White, 484 U.S. 219 (1988).*[1] (Original jurisdiction was conferred on that court pursuant to 28 U.S.C. §§ 1337 and 1367(a).)

Defendants in this matter filed a motion to dismiss, which was granted by the trial court and later, affirmed by the Tenth Circuit. As that decision is in irreconcilable conflict with the established precedent of this Court, Smith therefore asks it to issue a writ or mandamus and/or prohibition. The law is clear, and need not be revisited, but the inferior federal courts' duty thereunder appears equally clear.

---

[1] Petitioner did not challenge the Colorado Supreme Court's decision on his application for bar admission in lower federal court on obvious grounds of federalism, and he has not as yet challenged the decision itself in this Court on the ground that all state-law remedies have not been exhausted.

ARGUMENT

I. THE RIGHT OF ACCESS TO THE COURTS REQUIRES THAT LOWER COURTS APPLY EXISTING LAW TO THE FACTS OF THE CASE.

In our government, the courts perform three indispensable functions: resolving disputes between individuals, defining the contours of our rights and responsibilities, and protecting citizens from infringements upon those rights by the government. And that last function is of paramount import to every American citizen, for as Chief Justice Marshall explained:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. . . .

Marbury v. Madison, 5 U.S. 137, 163 (1803).

The only "rights" we as citizens have are those we have the courage to assert and our courts, to vindicate when called upon to do so. And, if our nation's courts are at liberty to shirk their obligations at will, we have no rights at all -- for a right without a remedy is no right at all. *Id.*

Of similar significance to all citizens is the courts' function of defining the contours of our portfolio of rights -- for liberty "finds no refuge in a jurisprudence of doubt." *Planned Parenthood of S.E. Pa. v. Casey, 505 U.S. 833, 844 (1992).* We rely on courts' authoritative pronouncements to furnish adequate notice as to what behavior will be considered lawful, and more importantly, notice of what our government can and cannot lawfully to do us. As Justice O'Connor observed:

> With Cardozo, we recognize that no judicial system could do society's work if each issue is eyed afresh in

> every case that raised it. Indeed, the very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable.

Planned Parenthood, 505 U.S. at 854 (citations omitted).

When a lower federal court judge willfully disregards direct precedent established by this Court which is precisely on point, and does so without good cause, he or she displays a disrespect for our law that borders on outright treason. And, if the rule of law is to mean anything, such malfeasance cannot be tolerated.

II. INFERIOR FEDERAL COURTS WILLFULLY DISREGARDED ESTABLISHED DIRECT PRECEDENT IN THIS MATTER.

A. Summary of Pertinent Facts

A threadbare summation of Smith's complaint and the facts precipitating them is essential to the understanding of this case. Motivated by their plainly-expressed disdain for his exercise of rights ostensibly protected by the First Amendment, an inquiry panel of the Colorado Board of Law Examiners demanded that he submit to an involuntary psychiatric examination as a condition precedent to his receiving a statutory hearing on the matter of his admission to practice law. Armed only with conclusory allegations, the panel successfully persuaded a colleague on the Board to issue an "order" to that effect.

While Smith, by and through counsel, objected to the order on grounds that under the circumstances, it violated his right to privacy and constituted improper retaliation against him for his lawful exercise of his constitutional rights, he was not afforded a forum in which to properly challenge it. Federal courts were

unavailable by virtue of *Younger* abstention,[2] lower state courts did not have jurisdiction over the matter,[3] and the statute itself provides no procedure for timely state supreme court review of interim orders. As such, the Colorado bar applicant is forced to choose between relinquishing his due process right to a hearing and forfeiting his right to privacy. When Smith opted to invoke his privacy right, he was summarily denied a license to practice law in Colorado -- without benefit of a hearing.

To not put too fine a spin on it, the Colorado bar admission regime enables authorities to commit blackmail. If you refuse to acquiesce to an outrageously unconstitutional invasion of your privacy, Colorado officials can not only threaten to "break your professional legs," but actually make good on their threats.

As Smith is entitled by statute to reapply for admission, he filed suit in federal district court to have Colorado's bar admission statute[4] declared unconstitutional, further seeking damages in tort for the wrongful deprivation of procedural due process -- and from the state supreme court justices themselves, for negligent supervision of their subordinates on the Board. However, the district court denied federal jurisdiction on grounds that the *Rooker-Feldman* doctrine applied. The Tenth Circuit affirmed that decision.

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[2] *Younger v. Harris, 401 U.S. 37 (1971).* As now-Chief Justice Rehnquist observed (by expressing it in the negative), *Younger* abstention rests on the reasonable assumption that state judges will be faithful to their constitutional responsibilities. *Huffman v. Pursue, Ltd., 420 U.S. 592, 611 (1975).*

[3] *See, Colorado Supreme Court Grievance Cmte. v. District Court, 850 P.2d 150 (Colo. 1983) (in re: attorney challenge to constitutionality of Disciplinary Rule).*

[4] *Rule 201, Colo. R. Civ. P.*

B. *Rooker-Feldman* Cannot Apply to This Situation as a Matter of Law

If there is one legal principle pertinent to this matter which cannot be disputed, it is that the *Rooker-Feldman* doctrine does not apply to facial challenges to a statute. And even if the tort claims bundled together with the facial challenges could be dismissed pursuant to *Rooker-Feldman,*[5] the proper vehicle would be the grant of a motion for partial summary judgment, leaving the facial challenges intact. This result is in fact mandated by *Feldman*, wherein this Court observed that

> to the extent that Hickey and Feldman sought review in the District Court of the ... denial of their petitions for waiver, the District Court lacked subject-matter jurisdiction over their complaints. . . . To the extent that Hickey and Feldman mounted a general challenge to the constitutionality of [the bar admission rule], . . . the District Court should have subject-matter jurisdiction over their complaints.
>
> The respondents' claims that the [bar admission] rule is unconstitutional [does] not require review of a judicial decision in a particular case. The District Court, therefore, has subject matter over these elements of the respondents' complaints.

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482-3, 487 (1983).

At least in the Tenth Circuit, the only time where *Rooker-*

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[5] As *Feldman* was decided prior to the enactment of 28 U.S.C. § 1367, substantially narrowing the array of judge-made issue and claim preclusion doctrines, it remains an open question.

> *Feldman* applies is when a federal plaintiff asks a lower federal court to set aside a "state court judgment."[6] But as a matter of law, no federal court can order a state to issue a license to anyone. And when it comes to facial challenges to a statute, there is no "state court judgment" to be set aside. Hence, by definition, *Rooker-Feldman* cannot possibly apply to any part of this case.[7]

C. The Tenth Circuit Opinion Is Plainly Inexplicable

Given that backdrop, Judge Anderson's attempt to invoke the *Rooker-Feldman* doctrine is plainly inexplicable:

> [I]n general, we must ask whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment. Three related concepts -- injury, causation, and redressability -- inform this analysis. In other words, we approach the question by asking whether the state-court judgment *caused*, actually and proximately, the *injury* for which the federal-court plaintiff seeks *redress*. If it did, *Rooker-Feldman* deprives the federal court of jurisdiction.

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[6] In *Kenmen Eng'g v. City of Union, 314 F.2d 468, 2002.C10.0001360, ¶ 61 (10th Cir. 2002) (Versuslaw)*, Judge Tacha wrote:

> The *Rooker-Feldman* doctrine asks: is the federal plaintiff seeking to set aside a state judgment, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party. If the former, then the district court lacks jurisdiction; if the latter, then there is no jurisdiction....

[7] This is in direct contrast to *Feldman,* which involved the bar admission practices of the District of Columbia.

Exhibit B at 7.

Judge Anderson's application of this rule to the case before him borders on the comically absurd. Especially with respect to the facial challenges, there is no applicable state court judgment to injure anyone!

Even with respect to Smith's tort claims, Judge Anderson's decision is bizarre. Amazingly, he has conflated the concepts of injury and damages -- concepts introduced in the first week of law school.[8] Following *Carey, supra.*, the 'injury' Smith alleged was to his due process rights (no hearing), and the 'damages' are either nominal or enormous -- depending upon whether he would have been admitted to Colorado's bar, *but for* the conduct he has complained of. Hence, the state-court judgment (denying Smith a license) could not have *caused* the injury -- as a matter of law.

III. WHY THIS CASE IS OF SUFFICIENT IMPORT TO COMPEL THIS COURT'S ATTENTION

This matter comes before the Court on the crest of a wave of constitutional crisis -- threatening the fabric of our Republic. It is, as Justice Stevens recently put it, the loss of "the Nation's confidence in the judge as an impartial guardian of the rule of law."[9]

We don't ask for perfection from our judges, but what we do ask, we have the right to insist on: that they do "their mortal best

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[8] It is this fundamental distinction of basic tort law which makes Judge Anderson's decision so inexplicable. To hold as he did would be like finding that, if the driver of a Mack truck smashes into a new Bentley and a rusted-out 1978 Yugo sitting on the side of the road, the owner of the Yugo was not "injured," while the owner of the Bentley was.

[9] *Bush v. Gore, 531 U.S. 98, 2000.SCT.0042209, ¶ 170 (2000) (Versuslaw) (Stevens, J., dissenting).*

to discharge their oath of office." *Sumner v. Mata, 449 U.S. 539, 549 (1981).* As that oath requires judges to administer justice without respect to persons, and to faithfully and impartially discharge their duties, *28 U.S.C. § 453,* it is not readily lost on the citizenry at large that the most accurate predictor of how a state court would rule on any election dispute is to identify the party that nominated the judge or judges making the decision.[10] And indeed, this bizarre spectacle played itself out again just recently in the Ninth Circuit.[11]

At a certain point, the evidence of corruption in our courts becomes so overwhelming that it cannot be blithely dismissed as coincidental or tolerated as de minimis. By way of example, the Colorado Supreme Court granted a law license to a cocaine-dealing convicted felon daughter of a noted Democratic Party apparatchik,[12] while summarily denying the bar application of a Republican candidate for Colorado's House of Representatives a mere TWO DAYS after he failed in his election bid.[13] Given the facially partisan flavor of those decisions, it is unsurprising to find that that court was installed almost exclusively by Democrats.

Unfortunately, allegations of widespread judicial corruption are not limited to inferences from dubious decisions. Professor

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[10] *See, e.g., Palm Beach County Canvassing Board v. Harris, 772 So.2d 1243 (Fla. 2000), New Jersey Democratic Party, Inc. v. Samson, No. A-24 September Term 2002 (N.J. 2002), Beauprez v. Avalos, 42 P.3d 642 (Colo. 2002).*

[11] *Southwest Voter Registration Education Project v. Shelley, 2003.C09.0000695, No. 03-56498 (9th Cir. Sept. 15, 2003) rev'd en banc, 2003.C09.0000715 (9th Cir. Sept. 23, 2003) (Versuslaw).*

[12] *Steve Garnaas, "Police Blast Adams DA Felon Hired As Prosecutor," Denver Post, July 15, 1997, at B1.*

[13] *Application of Leonard Alford Thomas, No. LX98-23 (Colo. Nov. 9, 2000).*

Alan Dershowitz, a distinguished member of this Court's Bar, openly confessed what the average citizen only suspects:

> It is widely known that many state court judges and some lower court judges play favorites among litigants and lawyers. Roy Cohn once famously quipped: "I don't care if my opponent knows the law, as long as I know the judge." In the old days, it was financial corruption -- cash changed hands. Then it became the "favor bank," in which personal favors are quietly stored and exchanged. I have seen it with my own eyes in the courts of Boston, New York, and elsewhere.[14]

The perception that judges are no longer impartial guardians of the law, but rather, an autocratic and entirely unaccountable 'super-legislature', is manifesting itself in even more and more bizarre ways. The filibusters of circuit court nominations such as those of Miguel Estrada and Priscilla Owen,[15] the spectacle of Alabama Chief Justice Roy Moore's strident public defiance of a federal court order,[16] and celebrated plaintiff's lawyer and former Michigan Democratic gubernatorial candidate Geoffrey Fieger's reported filing of an 83-page motion for the recusal of state supreme court justices from the opposing party -- three of which had publicly portrayed themselves during their election campaigns as the "antidote to a judicial takeover by 'Fieger's

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[14] Alan M. Dershowitz, Supreme Injustice: How the High Court Hijacked Election 2000 (New York: Oxford U. Press, 2001), p. 116.
[15] Helen Dewar, "Filibuster Rule Change Is Urgent, Frist Says," Washington Post, Jun 6, 2003, p. A25.
[16] *See, e.g.,* David Mattingly, "Tumult at Alabama High Court," CNN, Aug 23., 2003, *available at* http://www.cnn.com/2003/-LAW/08/23/-ostc.mattingly/index.html.

friends',"[17] come immediately to mind. If legislators, lawyers, and even judges are telling the general public that our system is no longer trustworthy, is it any wonder that the public believes them?

Truth be told, judicial corruption, cronyism, and favoritism are as old as the hills. As Thomas Jefferson observed:

> We all know that permanent judges acquire an esprit de corps; that, being known, they are liable to be tempted by bribery; that they are misled by favor, by relationship, by a spirit of party, by a devotion to the executive or legislative....[18]

When you find, as Smith did, that the judge deciding your case belongs to the same exclusive social club as several key defendants, and you have to learn this discomfiting fact from a total stranger, your confidence in his ability to adjudicate your claim fairly diminishes by several orders of magnitude. But while the fact of judicial corruption is perhaps unavoidable ("Our judges are as honest as other men and not more so."[19]), the question is whether the safeguards built into the legal system are sufficient to protect the citizen who has been wrongfully deprived of his most basic constitutional right. For, if an American citizen can no longer confidently rely on this Nation's courts to protect his constitutional rights, then verily, he has no rights left to protect.

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[17] *See*, Brian Dickerson, "Justice Knows Fieger's Not the Problem," Detroit Free Press, Sept. 22, 2003, *available at* http://-www.freep.com/news/metro/dicker-22_20030922.htm.

[18] Thomas Jefferson, Letter (to Abbe Arnoux), 1789, *excerpted at* *http://etext.lib.virginia.edu/jefferson/quotations/jeff1520.htm*.

[19] Thomas Jefferson, Letter (to William C. Jarvis, 1820), *excerpted at* http://etext.lib.virginia.edu/jefferson/quotations/jeff1030.htm.

IV. THE GRANT OF A WRIT WILL BE IN AID OF THIS COURT'S APPELLATE JURISDICTION.

At the end of the day, the Tenth Circuit has declared that, while future Colorado bar applicant "Roe #1" can raise a facial challenge to that state's bar admission statute, future bar applicant Kenneth Smith may not.

And, for the "rule of law" to have any meaning, this simply cannot be.

Perhaps it is undue naievete on Petitioner's part, but he has been laboring under the seemingly reasonable presumption that this Court's pronouncements are indeed the law of the land, and that we as citizens may rely on them as guidance for governing our daily affairs -- as our nation's courts stand ready to enforce them, should the protection of the laws ever need to be invoked.

One presumes, therefore, that a circuit court's willful refusal, in an unpublished opinion, to not only follow established precedent of this Court but a decision of the Circuit directly on point, is sufficiently rare as to constitute an 'exceptional circumstance' warranting the exercise of this Court's powers. Furthermore, as what this Court allows, it sanctions, the failure to take corrective action in this matter constitutes a license for lower federal courts to dispense private justice on an ad hoc basis, necessarily declaring the "rule of law" null and void.

Finally, on account of the fact that six of the defendants in this matter are sitting justices of the Colorado Supreme Court, sued in their individual capacities under 42 U.S.C. § 1983 on a negligent supervision theory, to permit them to adjudicate this matter seems absurdly violative of due process. *Tumey v. Ohio, 273 U.S. 510 (1927).*

V. CONCLUSION

If the Bill of Rights is to mean anything, every individual must have the right to claim the protection of our laws when he suffers an injury. And if that right of access to the courts is to mean anything, every individual must have the right to expect that the federal court charged with adjudicating that claim will faithfully and impartially apply the law to the facts, in accordance with his oath. And this is an indispensable predicate to a system of ordered liberty, for without the sword of the law and the shield of the courts, we would all stand defenseless in the face of official lawlessness.

Ensuring that federal courts follow the law as this Court has declared it aids in its appellate jurisdiction, and this Court is the only entity which can vindicate a citizen's right of access to the federal courts. And if this is not an extraordinary case involving extraordinary malfeasance and thus, requiring an extraordinary response from this Court, our Republic is in grave peril. Smith therefore prays for the issuance of an appropriate writ from this Court, and any other remedy it might sees fit to bestow.

Respectfully submitted this 12th day of November,

Kenneth L. Smith, *pro se*
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[Filed U.S. District Court, District of Colorado]
[2001 Dec 14, PM 4:34]
[James R. Manspeaker, Clerk]
[By _____Dep. Clk]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Edward W. Nottingham

Civil Action No. 00-N-2225

KENNETH L. SMITH,

Plaintiff,

v.

MARY J. MULLARKEY, REBECCA LOVE KOURLIS, GREGORY J. HOBBS, JR., ALEX J. MARTINEZ, MICHAEL L. BENDER, and NANCY E. RICE, both personally and in their representative capacities as justices of the COLORADO SUPREME COURT, GREGORY KELLUM SCOTT, in his personal capacity only, NATHAN B. COATS. in his representative capacity as a justice of the Colorado Supreme Court, ALAN K. OGDEN, ; SUSAN B. HARGLEROAD, SHARI FRAUSTO, LES WOODWARD, CARLOS SAMOUR, JAMES COYLE, III, ; LINDA DONNELLY, MELANIE BACKES, et al., both personally and in their representative capacity as agents of the COLORADO BOARD OF LAW EXAMINERS; and JOHN DOES 1-9,

Defendants.

FINAL JUDGMENT

In accordance with the order entered orally in open court on December 14, 2001, and pursuant to Fed. R. Civ. P. 58(2),

1. The following FINAL JUDGMENT is hereby entered:

a. Defendants's[sic] Motion to Dismiss for Lack of Subject Matter Jurisdiction and Alternatively, on Grounds of Absolute Judicial and Quasi-Judicial Immunity (Incorporating Authorities) (#18) filed May 1, 2001, is GRANTED. The court finds there are three bases for this ruling:

(i). The United States District court for this district does not have subject matter jurisdiction over this case because it is a challenge by the plaintiff to a judgment entered in a quasi-judicial adjudicatory proceeding in his case, and is an improper attempt to review that judgment in this court, as opposed to seeking review in the United States Supreme Court.

(ii). The defendants are absolutely immune from the allegations concerning money damages in this lawsuit.

(iii) The Complaint fails to state a claim on which relief can be granted.

b. This case is DISMISSED with prejudice.

2. Defendants shall have their costs upon the proper filing of a Bill of Costs within ten days of this Final Judgment.

Dated this 14 day of December, 2001.

APPROVED BY THE COURT:

____/s/_____
EDWARD W. NOTTINGHAM
United States District Judge

ENTERED FOR THE COURT:
JAMES R. MANSPEAKER, CLERK

By __/s/_____
Stephen P. Ehrlich
Chief Deputy Clerk

[Entered on the docket Dec. 14, 2001]
[James R. Manspeaker, Clerk]
[By ____/unsigned/____]

[Filed United States Court of Appeals Tenth Circuit]
[Jun 11 2003, Patrick Fisher, Clerk]

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

KENNETH L. SMITH,

Plaintiff-Appellant,

v.

MARY J. MULLARKEY, personally and in her representative capacity as Justice of the Colorado Supreme Court; REBECCA LOVE KOURLIS, personally and in her representative capacity as Justice of the Colorado Supreme Court; GREGORY J. HOBBS, JR., personally and in his representative capacity as Justice of the Colorado Supreme Court; ALEX J. MARTINEZ, personally and in his representative capacity as Justice of the Colorado Supreme Court; MICHAEL L. BENDER, personally and in his representative capacity as Justice of the Colorado Supreme Court ; NANCY E. RICE, personally and in her representative capacity as Justice of the Colorado Supreme Court; GREGORT KELLUM SCOTT, in his personal capacity only; NATHAN B. COATS, in his representative capacity as Justice of the Colorado Supreme Court; ALAN K. OGDEN, personally and in his representative capacity as agent of the Colorado Board of Law Examiners; SUSAN B. HARGLEROAD, personally and in her representative capacity as agent of the Colorado Board of Law Examiners; SHARI FRAUSTO, personally and in her representative capacity as agent of the Colorado Board of Law Examiners; LES WOODWARD, personally and in his representative capacity as agent of the Colorado Board of Law Examiners; CARLOS SAMOUR,

personally and in his representative capacity as agent of the Colorado Board of Law Examiners; JAMES COYLE, III, personally and in his representative capacity as agent of the Colorado Board of Law Examiners; LINDA DONNELLY, personally and in her representative capacity as agent of the Colorado Board of Law Examiners; MELANIE BACKES, personally and in her representative capacity as agent of the Colorado Board of Law Examiners; and John Does 1-9,

Defendants-Appellees.

ORDER AND JUDGMENT*

Before **BRISCOE, BARRETT,** and **ANDERSON,** Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See. Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(g). This case is therefore ordered submitted without oral argument.

Plaintiff Kenneth L. Smith, appearing pro se, appeals from a final judgment entered by the district court dismissing his complaint against defendants, which he brought pursuant to 42

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

U.S.C. § 1983 and the Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213. The district court ruled that it did not have subject matter jurisdiction over plaintiff's case. We affirm.

The facts of this case are well known to the parties and will not be repeated at length here. The dispute surrounds plaintiff's application to practice law in the state of Colorado. When plaintiff was ordered to submit to a mental status examination by the Board of Law Examiner's[sic] Hearing Panel, however, plaintiff refused. Primarily because plaintiff refused to submit to that examination, the Hearing Panel recommended to the Colorado Supreme Court that plaintiff's application be denied. After consideration of the record, including plaintiff's application, the Hearing Panel's report and recommendation, plaintiff's exceptions to that report, and the responses filed by the Board of Law Examiners, the Colorado Supreme Court denied plaintiff's application for admission to the State Bar.

Plaintiff did not seek review of that denial with the United States Supreme Court, as he is permitted pursuant to 28 U.S.C. § 1257. Instead, ten months later, plaintiff filed a complaint in federal district court setting forth twenty claims for relief for alleged violations of federal law and of plaintiff's constitutional rights. Plaintiff sought declarations that the Colorado bar admission process and certain admissions rules were unconstitutional, as well as money damages "resulting from the wrongful deprivation of [plaintiff's] property interest in the right to practice law." R. Vol. I, doc. 5 at 63.

Defendants moved to dismiss plaintiff's complaint for lack of subject matter jurisdiction and, alternatively, on grounds of absolute judicial and quasi-judicial immunity. The district court granted that motion ruling, inter alia, that "[t]he United States District Court does not have subject matter jurisdiction over this case because it is a challenge by the plaintiff to a judgment entered in a quasi-judicial adjudicatory proceeding in his case, and is an improper attempt to review that judgment in this court, as opposed to seeking review in the United States Supreme

[Court." *Id.*, doc. 32 at 2. Plaintiff has appealed, disputing the district court's determination that it lacked jurisdiction.[1] We review that determination de novo.

Because federal review of state court judgments may be obtained only in the United States Supreme Court pursuant to 28 U.S.C. § 1257, "[t]he Rooker-Feldman doctrine prohibits a lower federal court from considering claims actually decided by a state court, and claims 'inextricably intertwined' with a prior state-court judgment. *Kenmen Eng'g v. City of Union*, 314 F.3d 468, 473 (10th Cir. 2002) (citing *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415-16 (1923); *Dist. Of Columbia Ct. of App. v. Feldman*, 460 U.S. 462, 483 n.16 (1983)). Under this doctrine, a party who loses in a state court proceeding is barred "'from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights.'" *Kiowa Indian Tribe of Okla. v. Hoover*, 150 F.3d 1163, 1169 (10th Cir. 1998) (quoting *Johnson v. DeGrandy*, 512 U.S. 997, 1005-06 (1994)).

In his appeal, plaintiff argues that his federal court complaint includes general constitutional challenges to Colorado state law that fall outside this jurisdictional bar. In an opinion released during the briefing of this appeal, the court discussed the *Rooker-Feldman* doctrine and, most relevant to the appeal, the

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[1] The district court stated that there were three bases for dismissing plaintiff's complaint: (1) lack of subject matter jurisdiction; (2) absolute immunity; and (3) failure to state a claim on which relief can be granted. Because we agree that the district court lacked subject matter jurisdiction over plaintiff's claims, we do not address plaintiff's arguments concerning the district court's alternative bases for its ruling. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998) ("Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.").

addressed the contours of the phrase "inextricably intertwined" as it has been articulated by the Supreme Court. *See Kenmen Eng'g*, 314 F.3d at 475-477. In that opinion, the court stated:

> Thus, the Supreme Court has identified two categories of cases that fall outside *Feldman's* 'inextricably intertwined' umbrella. First, under *Feldman*, a party may bring a general constitutional challenge to a state law, provided that: (1) the party does not request that the federal court upset a state-court judgment applying that law against the party, and (2) the prior state-court judgment did not actually decide that the state law at issue was facially constitutional. Second, under *Pennzoil* [*Co. v. Texaco, Inc.*, 481 U.S. 1 (1987)], a party may challenge state procedures for enforcement of a judgment, where consideration of the underlying state-court decision is not required.

Id. At 476 (citations and footnote omitted). Noting the difficulty in formulating a "foolproof test" for guiding the courts in deciding the inextricably intertwined question, the court articulated the following inquiry:

> in general we must ask whether the injury alleged by the federal plaintiff resulted from the state court judgment or is distinct from that judgment. Three concepts -- injury, causation, and redressability -- inform this analysis. In other words, we approach the question by asking whether the state-court judgment *caused*, actually and proximately, the *injury* for which the federal-court plaintiff seeks *redress*. If it did, *Rooker-Feldman* deprives the federal court of jurisdiction.

Id. (citations, quotation, and footnote omitted).

Using these principles as a guide, we are convinced that the

district court did not have jurisdiction over plaintiff's claims. After a careful reading of plaintiff's complaint, affording him the liberality given to all pro se litigants, we conclude that each of plaintiff's claims is inextricably intertwined with the state court's denial of his application for admission to the state bar; thus, under *Rooker-Feldman*, those claims may not be reviewed by the district courts. Plaintiff's continuing attempts to re-frame the issues so that his claims fall outside the ambit of *Rooker-Feldman* are unavailing. Despite his protests to the contrary, it is clear that the plaintiff's injury resulted from the state-court judgment, that his complaint in federal court sought only to upset that judgment, and that the resolution of his federal claims necessarily required consideration of the underlying state-court decision. *See Kenmen Eng'g*, 314 F.3d at 476. Accordingly, the district court correctly dismissed plaintiff's complaint for lack of subject matter jurisdiction.

We have reviewed plaintiff's remaining arguments concerning the jurisdictional issue and we conclude that they are without merit. The judgment of the United States District Court for the District of Colorado is AFFIRMED.

Entered for the Court

[unsigned]
Stephen H. Anderson
Circuit Judge